**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 5192 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**DV KANSARA - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

==========

**Appearance :**
MR CG GOVINDAN for MR AK CLERK for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

==========

**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 26/04/2006**

**ORAL JUDGMENT**

1.In the present petition, the petitioner has challenged the validity of an order dated 12-06-1997 by which he is posted through transfer on deputation on the post of Secretary, Ahmedabad Consumer Disputes Redressal Forum

(Rural).

2. The petitioner at the relevant time was working as the Assistant Director in the Directorate of Civil Supplies. It is the case of the petitioner that without his consent, he was ordered to be posted on deputation on the post of Secretary, Ahmedabad Consumer Disputes Redressal Forum (Rural) by the impugned order dated 12-06-1997. The petitioner has contended that without his consent he could not have been sent on deputation. The petitioner has stated that he has never given such consent.

3. The respondents though have filed the reply have not denied that the petitioner was being sent on deputation as Secretary, Ahmedabad Consumer Disputes Redressal Forum (Rural). In fact in paragraph-6 of the reply, it is admitted that the petitioner is transferred and sent on deputation as Secretary, Ahmedabad Consumer Disputes Redressal Forum (Rural). In view of the above pleadings, learned advocate Shri C.G. Govindan for learned advocate Shri A.K. Clerk for the petitioner raised a short contention that the petitioner could not have been sent on deputation without his consent. In

support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Gujarat and others v. Inder Singh and others reported in (1997) 8 Supreme Court Cases 372, wherein Hon'ble Supreme Court while explaining concept of deputation held that without consent of the concerned employee, it is not possible to send him on deputation. Reliance was also placed on the decision of Learned Single Judge of this Court in the case of Bhagwatiprasad Gordhandas Bhatt v. The State of Gujarat & ors. reported in 1977 (18)GLR 562, wherein also the Learned Single Judge of this Court observed that when one is in the department or is in a cadre, the proper authority can post him wherever, it is open to the authority to post a person belonging to that cadre and take the very duty which is the duty assigned to them. But if an employee is to be taken out of cadre and sent to altogether another filed of service, it can never be done without his consent. It was further observed that deputation and transfer basically differ from each other. Transfer is the right of the master and it is an incident of service whereas deputation can only be with the consent of the employee concerned.

4.In view of the fact that admittedly the petitioner was being sent on deputation from his parent department to another post outside his cadre, I have no hesitation in coming to the conclusion that his transfer in posting on deputation could have been resorted to without his consent. The ratio laid down in the above-mentioned decision would squarely apply in facts of the present case. In that view of the matter, the impugned order is illegal and unlawful. Though the attempt has been made in the affidavit in reply to suggest that it was open for the respondents to transfer the petitioner from one office to another, the impugned order itself records that transfer is on deputation. Additionally, in the reply also it is admitted that petitioner was being sent on deputation. Considering all these aspects of the matter, I find substance in the petition.

5.In the result, the petition is allowed. The impugned order dated 12-06-1997 is quashed. Rule made absolute with no order as to costs.

**(Akil Kureshi,J.)**

(raghu)